

2005 DRAFTING REQUEST

Bill

Received: **12/29/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - LRC**

By/Representing: **Nick Zavos**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Franchise registration statements, definition of banking, trust powers, authority of the division of banking, securities licenses, sellers of checks, pawnbrokers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 12/29/2004	kfollett 01/26/2005		_____			State
/P1			rschluet 01/27/2005	_____	lemery 01/27/2005		State
/1	mkunkel 11/14/2005	jdye 11/15/2005	pgreensl 11/15/2005	_____	lemery 11/15/2005	mbarman 12/23/2005	

FE Sent For:

<END>

→ At Intro.

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Subject: **Fin. Inst. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **nicholas.zavos@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

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FE Sent For:			<i>11/15</i> <i>pb</i>	<END>			

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/?	mkunkel	1/18/05 1/26/05					
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FE Sent For:

<END>



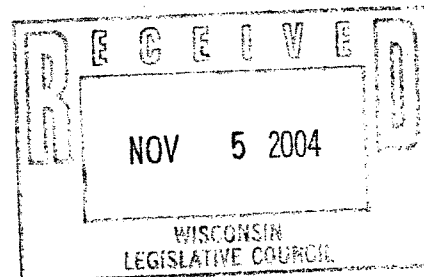
State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

November 4, 2004

Mr. Terry C. Anderson, Director
Joint Legislative Council
One East Main Street, Suite 401
P.O. Box 2536
Madison, WI 53701



Dear Mr. Anderson:

On behalf of the Wisconsin Department of Financial Institutions and the Wisconsin Office of Credit Unions, I am submitting the following recommendations for consideration by the Law Revision Committee during the 2005-2006 session. These submissions are in addition to the previous remedial legislation requests submitted by DFI that are summarized at the end of this memo. There is no fiscal impact to any of the proposed revisions.

Proposed Revision #1 – Credit Union Services

Remove “limited service offices outside the state” in Chapter 186.113(1m). Credit unions are now permitted to maintain out-of-state branches.

Current statute 186.113(1m) limits credit unions to limited service offices that were established before November 6, 2003. No such offices exist at this time. The description of branch offices in Chapter 186.113(1) was expanded with 2003 Act 63 to include “branch offices inside or outside of this state.”

Proposed Revision #2 - Chapter 138 Changes

1. Amend s.138.09(4) to read that a license can be revoked for any of the listed grounds by changing the word “and” at the end of 138.09(4)(a)2. to “or.”

The necessity of this change is that revocations are based upon separate grounds for each entity. It is impracticable to have an all-inclusive revocation list. The consequence of this is that if a licensed entity pays its license fee, their license can never be revoked for other unethical behavior because paying the fee is one of the listed grounds in s. 138.09 (4).

2. Add authority to bill for loan company examinations to s. 138.09(4)(a).

The authority to charge for an examination was eliminated by mistake when 1997 Act 27 passed. The goal was to eliminate the reference to the consumer credit review board only, which was in s. 138.09(4a) but that is also where the exam authority was as well.

Office of the Secretary

Mail: PO Box 8861 Madison, WI 53708-8861

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3. Amend s. 138.09 to give the department authority to issue special or general orders against loan companies and insurance premium finance companies.

The division of banking has the authority to issue special or general orders against all entities it licenses except loan companies and insurance premium finance companies. Both loan companies and insurance premium finance companies are licensed with DFI under ss. 138.09 and 138.12, respectively, but currently the division does not have the authority to enforce the provisions for these licensees under 138.09.

Proposed Revision #3 – Chapter 220 Authority

Include s.138.12 and s.224 subchapter III under chapter 220. Chapter 220 has several provisions that list all the banking division entities under the authority of the banking administrator. Insurance premium finance companies and mortgage banking have yet to be included.

Proposed Revision #4 - Chapter 183 Changes Relating to Reinstatement for LLCs

Revise 183.09025(4) to remove the 30-day limit provision in 183.09025(4)(a). The statute should mirror 180.1422 regarding reinstatement of business corporations which reads, “(1) A corporation that is administratively dissolved may apply to the department for reinstatement.”

We are requesting the change so that there is consistency in the law governing reinstatement whether it is a corporation or limited liability company. The 30-day time frame puts on unfair and unnecessary burden on LLC owners who wish to reinstate their business. Additionally it may create unnecessary administrative burdens on the agency in administering remedies.

Proposed Revision #5 – Chapter 218 Error

When 218.01(6m) of the statute was renumbered to ss. 218.0143(1) and (2) by 99 Act 31, the meaning was changed significantly. This was not the intent, and the prior meaning should be restored.

Specifically, prior to the change, s. 218.01(6m) indicated that whenever insurance coverage is included on a retail installment contract, the policy shall include public liability insurance (“PLI”) coverage or the seller shall notify the buyer that the motor vehicle is not covered by PLI.

After the change, s. 218.0143(1) indicates that whenever insurance coverage is included on a retail installment contract, the policy issued shall include PLI coverage, and s. 218.0143(2) indicates that that whenever insurance coverage is not included on a retail installment contract, the seller needs to notify the buyer that the vehicle is not covered by PLI. These provisions are contradictory and misleading.

Previously Proposed Revisions

Changes that have been submitted in previous sessions and are being resubmitted for consideration at this time include:

- 1) Repeal s. 186.35, eliminating the Wisconsin Credit Union Savings Insurance Corporation. The corporation was dissolved at a special meeting of the Board of Trustees and Members on May 8, 1999. 2001 SB 450
- 2) Add Mortgage Banking and Non-depository Small Business Administration (SBA) Lenders to s. 220.02. 2001 SB 807
- 3) Trust Service Offices – Eliminate the language “in this state” in ss. 221.0316 (4) and 223.07 (1). When changes were made to these sections in the 1995-96 session, an oversight occurred by not adopting language permitting Wisconsin financial institutions to establish Trust Service Offices at a bank or branch location outside of Wisconsin. 2001 SB 807
Also replace “the state or national bank” with “depository institutions, as defined in s. 221.0901 (2)(i).”
- 4) Sellers of Checks – Eliminate the “telegraph company” exemption under s. 217.02 (9). It is our understanding that this type of entity no longer exists. 2001 SB 807
- 5) Collection Agencies – Eliminate the term “professional men’s associations” from s. 218.04 (1)(a). This is an antiquated term that no longer needs to be specifically exempted from the “collection agency” definition. 2001 SB 807
- 6) Free Credit Balances – Amend s. 224.02 to eliminate the antiquated language that specifies the criteria with which an “agent for investment” must comply in order to pay interest on free credit balances. This will provide a clear exemption from the statutory definition of “the business of banking” and allow an “agent for investment” to pay interest on these balances to their clients. 2001 SB 807
- 7) Revocation and Suspension of Securities Licenses – amend s. 551.63 (2) to exclude the actions required to be taken by the Division of Securities against licensees for delinquency in paying either child support or state taxes, from the general standard required for Division actions. 2001 SB 807
- 8) Franchise Registration Statements – Amend s. 553.26 (4m) to clarify that once a person has registered a franchise, the person is not required to file any additional information except amendments that reflect material changes to the registration statement.

Amend s. 553.31 (2) to clarify that any amendment filed with the Division of Securities after the effective date of a registration for the sale of a franchise is effective upon receipt of the amendment.

2001
SB 807

- 9) Pawnbrokers – Create a blanket exemption in s. 138.10 for pawnbrokers licensed by DFI and remove the reference to rule-making authority from s. 138.10 and place it, more properly, within s. 138.09. 2001 SB 807
- 10) Service Corporations – Amend s. 180.1911 to allow minority ownership by non-CPAs in CPA firms. This omission was an oversight in 2001 Assembly Bill 345. 2003 LRB-2416/2

Sincerely,



Kathryn Carlson
Executive Assistant

cc: Secretary Lorrie Keating Heinemann

1/26 or 1/27 (?)

2001-2002 LEGISLATURE

LRB-3819/1

RJM:all:kjf

MDR:KJF

D-NOTE

PWF

2001 ASSEMBLY BILL 807

-1418/PP

RM
NOT RUN

February 12, 2002 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Financial Institutions.

gen act

1 AN ACT *to renumber* 138.10 (6); *to renumber and amend* 138.10 (2m) and
2 138.10 (7); *to amend* 138.10 (2), 217.02 (9), 218.04 (1) (a), 221.0316 (4), 223.07
3 (1), 224.02, 551.63 (2), 553.26 (4m) and 553.31 (2); *to repeal and recreate*
4 138.09 (title); and *to create* 138.10 (15) and 220.02 (2) (e) and (f) of the statutes;
5 **relating to:** various changes regarding the department of financial
6 institutions and persons regulated by the department of financial institutions
7 and granting rule-making authority (suggested as remedial legislation by the
8 department of financial institutions).

Analysis by the Legislative Reference Bureau

Pawnbrokers

Currently, pawnbrokers are subject to multiple licensing and operational requirements under the trade regulation statutes, the licensed lender statutes, and the pawnbroker statutes. Under the licensed lender statutes, before any person, including a pawnbroker, may charge interest in excess of 18% per year, the person must obtain a license from the division of banking (division) within the department of financial institutions. The division must investigate all of the relevant facts regarding each applicant. If the division finds that the applicant is of sufficient character and general fitness, is financially responsible, and meets all other

✓
✓/✓

percent

(DFI)

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requirements specified under the licensed lender statutes, the division must grant the license. The licensed lender statutes also contain requirements regarding annual reports by licensees to the division and licensee record keeping.

Under the pawnbroker statutes, a pawnbroker may not charge interest in excess of 3% per month or, unless the pawnbroker is a licensed lender, make a loan in excess of \$150. The pawnbroker statutes also mandate a specific procedure that a pawnbroker must follow when selling property deposited with the pawnbroker as security for a loan.

This bill exempts any person that is a licensed lender from the current prohibitions on charging interest in excess of 3% per month and making loans in excess of \$150. In addition, the bill exempts any pawnbroker that is also a licensed lender from the current, mandated procedure regarding the sale of property deposited as security for a loan. Finally, the bill grants the division the authority to promulgate rules and issue orders to administer and enforce the licensed lender statutes.

Authority of the division of banking

Under current law, the division has general authority to enforce all laws relating to banks and banking in this state. In addition, the division has specific authority to regulate certain financial institutions, including mortgage bankers, loan originators, mortgage brokers, and certain commercial institutions that lend to small businesses. This bill specifies that the division's general authority to enforce laws relating to banks and banking includes the authority to enforce laws relating to these financial institutions.

Trust services

Currently, a state bank may exercise certain trust powers with the approval of the division. In addition, with the approval of the division, a trust company bank or a state bank exercising trust powers may offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. This bill expands the authority of the division to allow a state bank or a trust company bank to offer trust services at the out-of-state offices of these financial institutions.

Sellers of checks

With certain exceptions, current law requires any person who engages in the business of selling and issuing checks, transmitting money, or receiving money for transmission (seller of checks) to obtain a license from the division. Current law also contains numerous regulations specifically governing sellers of checks. Currently, any telegraph company that receives money for immediate transmission by telegraph is exempt from the definition of "seller of checks" and, as a result, from these laws relating to sellers of checks. This bill removes this exemption.

Securities and investments

With certain exceptions, current law prohibits a person from engaging in the business of banking without being organized and chartered as a specified banking institution under state or federal law. Certain agents who receive and hold money, pending investment in real estate or securities on behalf of the person who deposited the money, are not engaged in the business of banking, as that term is currently

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* defined. However, this exemption from the definition of banking only applies if the agent keeps the money in a separate trust fund, does not commingle the money with the agent's own property, and does not agree to pay interest on the money other than to account for the actual income that is derived from the money while held pending investment.

This bill expands this exemption from the definition of banking. Under this bill, an agent who receives and holds money, pending investment in real estate or securities on behalf of the person who deposits the money, is not engaged in the business of banking, regardless of whether the money is separately kept and regardless of whether the agent agrees to pay interest on the money. Thus, under this bill, an agent may pay interest on money that the agent receives and holds, pending investment in real estate or securities on behalf of the person who deposited the money.

* Under current law, the division of securities in DFI oversees the licensing of securities broker-dealers, agents, investment advisers, and investment adviser representatives. Current law generally requires every order of the division of securities to be appropriate for the protection of both investors and the public interest. * Current law also specifically requires the division of securities to restrict or suspend a license if the licensee fails to pay court-ordered child support and to revoke a license if the licensee is liable for delinquent taxes. This bill clarifies that the general standard regarding protection of investors and the public interest does not apply to an order restricting, suspending, or revoking a license due to unpaid child support or delinquent taxes.

Franchises

* Under Wisconsin's current franchise investment law, a person attempting to sell a franchise must generally register the franchise offered for sale with the division of securities. It is unclear, though, whether the person is similarly required to register any material changes to the registration statement. This bill clarifies that, once a person has properly registered a franchise, the person is not required to file any additional information except amendments that reflect material changes to the registration statement. This bill also changes the effective date of any amendment filed after the effective date of the registration from the date the division of securities approves of the amendment to the date the division of securities receives the amendment. *

Collection agencies

Currently, a person who engages in business as a collection agency must be licensed by the commissioner of banking in DFI and is subject to laws specifically governing collection agencies. However, current law exempts certain entities from the definition of "collection agency" and, as a result, from the statutes governing collection agencies. Currently, certain professional men's associations that collect accounts for their members on a nonprofit basis are exempt from the definition of "collection agency." The term "professional men's association" is not currently defined.

This bill removes this exemption for professional men's associations.

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* For further information, see the NOTES provided by the law revision committee of the joint legislative council.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill. *and space*

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

* LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of financial institutions and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 138.09 (title) of the statutes is repealed and recreated to read:

2 **138.09 (title) Licensed lenders.**

3 **SECTION 2.** 138.10 (2) of the statutes is amended to read:

4 138.10 (2) MAXIMUM LOAN. ~~Unless made by a person licensed under s. 138.09,~~
5 a- A pawnbroker's loan may not exceed \$150.

6 **SECTION 3.** 138.10 (2m) of the statutes is renumbered 138.09 (13) and amended
7 to read:

8 138.09 (13) ~~PAWNBROKING BY LICENSED LENDERS.~~ The division of banking may
9 promulgate rules regulating the conduct of pawnbroking by persons licensed under
10 ~~s. 138.09~~ and issue orders to administer and enforce this section.

11 **SECTION 4.** 138.10 (6) of the statutes is renumbered 138.10 (13).

12 **SECTION 5.** 138.10 (7) of the statutes is renumbered 138.10 (14) and amended
13 to read:

14 138.10 (14) PENALTY. Any pawnbroker who ~~shall refuse~~ refuses to comply with
15 sub. (6) (13) shall, ~~upon conviction, be punished by imprisonment~~ be imprisoned in
16 the county jail for not more than one year or ~~by fine~~ fined not exceeding more than
17 \$500.

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1 **SECTION 6.** 138.10 (15) of the statutes is created to read:

2 138.10 (15) EXCEPTION. This section does not apply to any person that is
3 licensed under s. 138.09.

* NOTE: Under current law, pawnbrokers are subject to regulation under s. 138.10,
* Stats., which, among other things, limits loans to \$150 and caps interest rates at 3% per
* month. If a pawnbroker wants to charge interest rates greater than 18%, the pawnbroker
must also register as a licensed lender under s. 138.09, Stats. To register as a licensed
lender, a pawnbroker must meet certain character and fitness, and financial
responsibility requirements. In addition, the pawnbroker must meet certain record
keeping and annual reporting requirements. This SECTION provides that if a pawnbroker
registers as a licensed lender, the pawnbroker is exempt from the requirements of s.
138.10, Stats.

4 **SECTION 7.** 217.02 (9) of the statutes is amended to read:

5 217.02 (9) "Seller of checks" means a person who, as a service or for a fee or
6 other consideration, engages in the business of selling and issuing checks or the
7 receiving of money for transmission or the transmitting of money, or the transmitting
8 of money to foreign countries, ~~but does not include the business of a telegraph~~
9 ~~company in receiving money for immediate transmission by telegraph.~~

NOTE: This SECTION deletes the exemption of telegraph companies from the
definition of "seller of checks." Telegraph companies no longer exist.

10 **SECTION 8.** 218.04 (1) (a) of the statutes is amended to read:

11 218.04 (1) (a) "Collection agency" means any person engaging in the business
12 of collecting or receiving for payment for others of any account, bill or other
13 indebtedness. It shall not include attorneys at law authorized to practice in this state
14 and resident herein, banks, express companies, state savings banks, state savings
15 and loan associations, insurers and their agents, trust companies, ~~or professional~~
16 ~~men's associations collecting accounts for its members on a nonprofit basis, where~~
17 ~~such members are required by law to have a license, diploma or permit to practice~~
18 ~~or follow their profession,~~ real estate brokers, and real estate salespersons.

NOTE: Under current law, a person who engages in business as a collection agency
must be licensed by the division of banking in the department of financial institutions

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SECTION 8

(DFI) and is subject to laws that specifically regulate collection agencies. Certain "professional men's associations" that collect accounts for their members on a nonprofit basis are exempt from the definition of "collections agency." Since the term "professional men's association" is currently not defined and DFI cannot locate any such organizations, this SECTION deletes the exemption.

SECTION 9. 220.02 (2) ^{g g e h} (e) and (f) of the statutes are created to read:

220.02 (2) ^{e g} (e) Mortgage bankers, loan originators, and mortgage brokers under subch. III of ch. 224.

^{g h} (f) Nondepository small business lenders under subch. IV of ch. 224.

[* ~~NOTE~~] ^{g h} NOTE: Under current law the ~~division of banking~~ (division) in the department of financial institutions has the specific authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses. In addition the division's general authority authorizes it to enforce all laws relating to banks and banking in this state. This SECTION specifies that the division's general authority includes the authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses.] ^{stet - no changes here}

SECTION 10. 221.0316 (4) of the statutes is amended to read:

221.0316 (4) TRUST SERVICE OFFICES. A state bank exercising trust powers may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of any other depository institution, as defined under s. 221.0901 (2) (i). A state bank may, with the approval of the division, permit any other depository institution, as defined under s. 221.0901 (2) (i), exercising trust powers or any trust company bank organized under ch. 223 to establish and maintain a trust service office at any of its banking offices. The establishment and operation of a trust service office are subject to s. 223.07. This subsection does not authorize branch banking.

SECTION 11. 223.07 (1) of the statutes is amended to read:

223.07 (1) Any trust company bank may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of a depository institution, as defined in s. 221.0901 (2) (i), if the establishment of the trust service

ASSEMBLY BILL 807

- 1 office has been approved by the board of directors of the ~~state or national bank~~
2 depository institution at a meeting called for that purpose.

NOTE: Under current law, the ~~division of banking~~ (division) in the department of financial institutions may allow a state bank to exercise certain trust powers. In addition, the division ~~and~~ may allow a trust company bank or a state bank exercising trust powers to offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. During the 1995-1996 legislative session, the Legislature amended the law to allow out-of-state depository institutions to establish a Trust Service Office at a bank or branch location in Wisconsin. This and the preceding SECTION expand the authority of the division to allow a Wisconsin state bank or trust company bank to offer trust services at the out-of-state offices of certain financial institutions.

- 3 SECTION 12. 224.02 of the statutes is amended to read:

- 4 **224.02 Banking, defined.** The soliciting, receiving, or accepting of money or
5 its equivalent on deposit as a regular business by any person, partnership,
6 association, or corporation, shall be deemed to be doing a banking business, whether
7 such deposit is made subject to check or is evidenced by a certificate of deposit, a
8 passbook, a note, a receipt, or other writing, provided that nothing herein shall apply
9 to or include money left with an agent, pending investment in real estate or securities
10 for or on account of the agent's principal. ~~Provided, however, that if money so left with~~
11 ~~an agent for investment shall not be kept in a separate trust fund or if the agent~~
12 ~~receiving such money shall mingle same with the agent's own property, whether with~~
13 ~~or without the consent of the principal, or shall make an agreement to pay any certain~~
14 ~~rate of interest thereon or any agreement to pay interest thereon other than an~~
15 ~~agreement to account for the actual income which may be derived from such money~~
16 ~~while held pending investment, the person receiving such money shall be deemed to~~
17 ~~be in the banking business.~~

NOTE: This SECTION exempts from the definition of "business of banking" agents who receive and hold money pending investment in real estate or securities on behalf of the person who deposits the money. Under current law such an agent would only be exempt if the agent kept the money in a separate trust fund, did not mingle the money with the agent's own property, and did not agree to pay interest on the money. This SECTION exempts such agents regardless of whether they pay interest or whether the money is kept separate.

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SECTION 13

1 **SECTION 13.** 551.63 (2) of the statutes is amended to read:

2 551.63 (2) ~~No~~ Except as provided under s. 551.34 (1m) (b) and (c), no rule, form
3 or order may be made, amended or rescinded unless the division finds that the action
4 is necessary or appropriate in the public interest and for the protection of investors.
5 In prescribing rules and forms the division may cooperate with the securities
6 administrators of other states and the securities and exchange commission with a
7 view to achieving maximum uniformity in the form and content of registration
8 statements, notice filings, applications and reports wherever practicable.

NOTE: The current standard in s. 551.63 (2), stats., for actions of the division of securities prohibits rules, forms, or orders from being made, amended, or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. However, current s. 551.34 (1m) (b) and (c), stats., require action when a licensee fails to pay court-ordered child support or is liable for delinquent taxes.

This SECTION amends s. 551.63 (2), stats., to exclude the actions required for child support enforcement and delinquent taxes from the general standard used for division actions.

9 **SECTION 14.** 553.26 (4m) of the statutes is amended to read:

10 553.26 (4m) A person who has complied with sub. (1) need not file with the
11 division, during the period when the registration is effective, any more information,
12 ~~including any amendments to the offering circular~~ other than an application or
13 amendment required to be filed under s. 553.31. The division may not require
14 changes in the offering circular filed by the franchisor, subject to the division's
15 authority to suspend or revoke a registration for any of the causes under s. 553.28.

NOTE: This SECTION results from 1995 Wisconsin Act 364. The legislation, introduced as 1995 Assembly Bill 782, would have repealed s. 553.31, stats., which requires a franchise registrant to file material amendments to its uniform franchise offering circular. Assembly Amendment 4 to Assembly Bill 782 deleted the proposed repeal of s. 553.31. However, the amendment did not include the necessary changes to s. 553.26 (4m), stats., to remove inconsistent language and to clarify that the amendments required under s. 553.31, stats., must still be filed with the division of securities in the department of financial institutions. This SECTION makes those changes.

16 **SECTION 15.** 553.31 (2) of the statutes is amended to read:

ASSEMBLY BILL 807

553.31 (2) An amendment to an application filed after the effective date of the registration of the sale of franchises, if the amendment is approved by the division, is effective on the date the division determines, having due regard for the public interest or the protection of franchisees is effective upon receipt of the amendment by the division.

NOTE: This SECTION amends s. 553.31 (2), stats., to clarify that any amendment that is filed with the division of securities after the effective date of a registration of the sale of a franchise is effective upon receipt of the amendment by the division. The current statute is ambiguous as to whether it applies to any amendment filed after an effective registration or only to an amendment to an *application* that was filed after an effective registration.

SECTION 16. Initial applicability.

(1) The treatment of section 138.10 (2) and (15) of the statutes first applies to any person conducting business as a pawnbroker on the effective date of this subsection.

SECTION 17. Effective dates. This act takes effect on the day after publication, except as follows: A.R.

(1) PAWNBROKERS. The treatment of section 138.10 (2), (6), (7), and (15) of the statutes and SECTION ~~16~~^{A.R.}(1) of this act take effect on the first day of the 6th month beginning after publication.

(END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1418/P1dn

MDK: 

Date

Nick Zavos:

This bill is a redraft of 2001 AB 807, and it corresponds to items 2 through 9 of the "Previously Proposed Revisions" in DFI's letter of November 4, 2004.

* Please review the NOTES included in the draft and let me know if you want to make any changes.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1418/P1dn
MDK:kjfrs

January 27, 2005

Nick Zavos:

This bill is a redraft of 2001 AB 807, and it corresponds to items 2 through 9 of the "Previously Proposed Revisions" in DFI's letter of November 4, 2004.

Please review the NOTES included in the draft and let me know if you want to make any changes.

Mark D. Kunkel
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Phone: (608) 266-0131
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State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1418/P1

MDK:kjf:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Mark -

One change, p. 7.

Don Dyke

1 AN ACT *to renumber* 138.10 (6); *to renumber and amend* 138.10 (2m) and
2 138.10 (7); *to amend* 138.10 (2), 217.02 (9), 218.04 (1) (a), 221.0316 (4), 223.07
3 (1), 224.02, 551.63 (2), 553.26 (4m) and 553.31 (2); *to repeal and recreate*
4 138.09 (title); and *to create* 138.10 (15) and 220.02 (2) (g) and (h) of the
5 statutes; **relating to:** various changes regarding the Department of Financial
6 Institutions and persons regulated by the Department of Financial Institutions
7 and granting rule-making authority (suggested as remedial legislation by the
8 Department of Financial Institutions).

Analysis by the Legislative Reference Bureau

Pawnbrokers

Currently, pawnbrokers are subject to multiple licensing and operational requirements under the trade regulation statutes, the licensed lender statutes, and the pawnbroker statutes. Under the licensed lender statutes, before any person, including a pawnbroker, may charge interest in excess of 18 percent per year, the person must obtain a license from the Division of Banking (division) within the Department of Financial Institutions (DFI). The division must investigate all of the relevant facts regarding each applicant. If the division finds that the applicant is of sufficient character and general fitness, is financially responsible, and meets all

other requirements specified under the licensed lender statutes, the division must grant the license. The licensed lender statutes also contain requirements regarding annual reports by licensees to the division and licensee record keeping.

Under the pawnbroker statutes, a pawnbroker may not charge interest in excess of 3 percent per month or, unless the pawnbroker is a licensed lender, make a loan in excess of \$150. The pawnbroker statutes also mandate a specific procedure that a pawnbroker must follow when selling property deposited with the pawnbroker as security for a loan.

This bill exempts any person that is a licensed lender from the current prohibitions on charging interest in excess of 3 percent per month and making loans in excess of \$150. In addition, the bill exempts any pawnbroker that is also a licensed lender from the current, mandated procedure regarding the sale of property deposited as security for a loan. Finally, the bill grants the division the authority to promulgate rules and issue orders to administer and enforce the licensed lender statutes.

Authority of the Division of Banking

Under current law, the division has general authority to enforce all laws relating to banks and banking in this state. In addition, the division has specific authority to regulate certain financial institutions, including mortgage bankers, loan originators, mortgage brokers, and certain commercial institutions that lend to small businesses. This bill specifies that the division's general authority to enforce laws relating to banks and banking includes the authority to enforce laws relating to these financial institutions.

Trust services

Currently, a state bank may exercise certain trust powers with the approval of the division. In addition, with the approval of the division, a trust company bank or a state bank exercising trust powers may offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. This bill expands the authority of the division to allow a state bank or a trust company bank to offer trust services at the out-of-state offices of these financial institutions.

Sellers of checks

With certain exceptions, current law requires any person who engages in the business of selling and issuing checks, transmitting money, or receiving money for transmission (seller of checks) to obtain a license from the division. Current law also contains numerous regulations specifically governing sellers of checks. Currently, any telegraph company that receives money for immediate transmission by telegraph is exempt from the definition of "seller of checks" and, as a result, from these laws relating to sellers of checks. This bill removes this exemption.

Securities and investments

With certain exceptions, current law prohibits a person from engaging in the business of banking without being organized and chartered as a specified banking institution under state or federal law. Certain agents who receive and hold money, pending investment in real estate or securities on behalf of the person who deposited the money, are not engaged in the business of banking, as that term is currently

defined. However, this exemption from the definition of banking only applies if the agent keeps the money in a separate trust fund, does not commingle the money with the agent's own property, and does not agree to pay interest on the money other than to account for the actual income that is derived from the money while held pending investment.

This bill expands this exemption from the definition of banking. Under this bill, an agent who receives and holds money, pending investment in real estate or securities on behalf of the person who deposits the money, is not engaged in the business of banking, regardless of whether the money is separately kept and regardless of whether the agent agrees to pay interest on the money. Thus, under this bill, an agent may pay interest on money that the agent receives and holds, pending investment in real estate or securities on behalf of the person who deposited the money.

Under current law, the Division of Securities in DFI oversees the licensing of securities broker-dealers, agents, investment advisers, and investment adviser representatives. Current law generally requires every order of the Division of Securities to be appropriate for the protection of both investors and the public interest. Current law also specifically requires the Division of Securities to restrict or suspend a license if the licensee fails to pay court-ordered child support and to revoke a license if the licensee is liable for delinquent taxes. This bill clarifies that the general standard regarding protection of investors and the public interest does not apply to an order restricting, suspending, or revoking a license due to unpaid child support or delinquent taxes.

Franchises

Under Wisconsin's current franchise investment law, a person attempting to sell a franchise must generally register the franchise offered for sale with the Division of Securities. It is unclear, though, whether the person is similarly required to register any material changes to the registration statement. This bill clarifies that, once a person has properly registered a franchise, the person is not required to file any additional information except amendments that reflect material changes to the registration statement. This bill also changes the effective date of any amendment filed after the effective date of the registration from the date the Division of Securities approves of the amendment to the date the Division of Securities receives the amendment.

Collection agencies

Currently, a person who engages in business as a collection agency must be licensed by the commissioner of banking in DFI and is subject to laws specifically governing collection agencies. However, current law exempts certain entities from the definition of "collection agency" and, as a result, from the statutes governing collection agencies. Currently, certain professional men's associations that collect accounts for their members on a nonprofit basis are exempt from the definition of "collection agency." The term "professional men's association" is not currently defined.

This bill removes this exemption for professional men's associations.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Financial Institutions and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 138.09 (title) of the statutes is repealed and recreated to read:

2 **138.09 (title) Licensed lenders.**

3 **SECTION 2.** 138.10 (2) of the statutes is amended to read:

4 138.10 (2) MAXIMUM LOAN. ~~Unless made by a person licensed under s. 138.09,~~
5 a- A pawnbroker's loan may not exceed \$150.

6 **SECTION 3.** 138.10 (2m) of the statutes is renumbered 138.09 (13) and amended
7 to read:

8 138.09 (13) ~~PAWNBROKING BY LICENSED LENDERS.~~ The division of banking may
9 promulgate rules ~~regulating the conduct of pawnbroking by persons licensed under~~
10 ~~s. 138.09 and issue orders to administer and enforce this section.~~

11 **SECTION 4.** 138.10 (6) of the statutes is renumbered 138.10 (13).

12 **SECTION 5.** 138.10 (7) of the statutes is renumbered 138.10 (14) and amended
13 to read:

14 138.10 (14) PENALTY. Any pawnbroker who ~~shall refuse~~ refuses to comply with
15 sub. (6) (13) shall, ~~upon conviction, be punished by imprisonment~~ be imprisoned in
16 the county jail for not more than one year or ~~by fine~~ fined not exceeding more than
17 \$500.

1 **SECTION 6.** 138.10 (15) of the statutes is created to read:

2 138.10 (15) **EXCEPTION.** This section does not apply to any person that is
3 licensed under s. 138.09.

NOTE: Under current law, pawnbrokers are subject to regulation under s. 138.10, stats., which, among other things, limits loans to \$150 and caps interest rates at 3% per month. If a pawnbroker wants to charge interest rates greater than 18%, the pawnbroker must also register as a licensed lender under s. 138.09, stats. To register as a licensed lender, a pawnbroker must meet certain character and fitness, and financial responsibility requirements. In addition, the pawnbroker must meet certain record keeping and annual reporting requirements. This SECTION provides that if a pawnbroker registers as a licensed lender, the pawnbroker is exempt from the requirements of s. 138.10, stats.

4 **SECTION 7.** 217.02 (9) of the statutes is amended to read:

5 217.02 (9) "Seller of checks" means a person who, as a service or for a fee or
6 other consideration, engages in the business of selling and issuing checks or the
7 receiving of money for transmission or the transmitting of money, or the transmitting
8 of money to foreign countries, ~~but does not include the business of a telegraph~~
9 ~~company in receiving money for immediate transmission by telegraph.~~

NOTE: This SECTION deletes the exemption of telegraph companies from the definition of "seller of checks." Telegraph companies no longer exist.

10 **SECTION 8.** 218.04 (1) (a) of the statutes is amended to read:

11 218.04 (1) (a) "Collection agency" means any person engaging in the business
12 of collecting or receiving for payment for others of any account, bill or other
13 indebtedness. It shall not include attorneys at law authorized to practice in this state
14 and resident herein, banks, express companies, state savings banks, state savings
15 and loan associations, insurers and their agents, trust companies, ~~or professional~~
16 ~~men's associations collecting accounts for its members on a nonprofit basis, where~~
17 ~~such members are required by law to have a license, diploma or permit to practice~~
18 ~~or follow their profession,~~ real estate brokers, and real estate salespersons.

NOTE: Under current law, a person who engages in business as a collection agency must be licensed by the division of banking in the department of financial institutions

(DFI) and is subject to laws that specifically regulate collection agencies. Certain “professional men’s associations” that collect accounts for their members on a nonprofit basis are exempt from the definition of “collections agency.” Since the term “professional men’s association” is currently not defined and DFI cannot locate any such organizations, this SECTION deletes the exemption.

SECTION 9. 220.02 (2) (g) and (h) of the statutes are created to read:

220.02 (2) (g) Mortgage bankers, loan originators, and mortgage brokers under subch. III of ch. 224.

(h) Nondepository small business lenders under subch. IV of ch. 224.

NOTE: Under current law the division of banking (division) in the department of financial institutions has the specific authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses. In addition the division’s general authority authorizes it to enforce all laws relating to banks and banking in this state. This SECTION specifies that the division’s general authority includes the authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses.

SECTION 10. 221.0316 (4) of the statutes is amended to read:

221.0316 (4) TRUST SERVICE OFFICES. A state bank exercising trust powers may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of any other depository institution, as defined under s. 221.0901 (2) (i). A state bank may, with the approval of the division, permit any other depository institution, as defined under s. 221.0901 (2) (i), exercising trust powers or any trust company bank organized under ch. 223 to establish and maintain a trust service office at any of its banking offices. The establishment and operation of a trust service office are subject to s. 223.07. This subsection does not authorize branch banking.

SECTION 11. 223.07 (1) of the statutes is amended to read:

223.07 (1) Any trust company bank may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of a depository institution, as defined in s. 221.0901 (2) (i), if the establishment of the trust service

1 office has been approved by the board of directors of the ~~state or national bank~~
2 depository institution at a meeting called for that purpose.

NOTE: Under current law, the division of banking (division) in the department of financial institutions may allow a state bank to exercise certain trust powers. In addition, the division may allow a trust company bank or a state bank exercising trust powers to offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. During the 1995-1996 legislative session, the legislature amended the law to allow out-of-state depository institutions to establish a Trust Service Office at a bank or branch location in Wisconsin. This and the preceding SECTION expand the authority of the division to allow a Wisconsin state bank or trust company bank to offer trust services at the out-of-state offices of certain financial institutions.

3 SECTION 12. 224.02 of the statutes is amended to read:

4 **224.02 Banking, defined.** The soliciting, receiving, or accepting of money or
5 its equivalent on deposit as a regular business by any person, partnership,
6 association, or corporation, shall be deemed to be doing a banking business, whether
7 such deposit is made subject to check or is evidenced by a certificate of deposit, a
8 passbook, a note, a receipt, or other writing, provided that nothing herein shall apply
9 to or include money left with an agent, pending investment in real estate or securities
10 for or on account of the agent's principal. ~~Provided, however, that if money so left with~~
11 ~~an agent for investment shall not be kept in a separate trust fund or if the agent~~
12 ~~receiving such money shall mingle same with the agent's own property, whether with~~
13 ~~or without the consent of the principal, or shall make an agreement to pay any certain~~
14 ~~rate of interest thereon or any agreement to pay interest thereon other than an~~
15 ~~agreement to account for the actual income which may be derived from such money~~
16 ~~while held pending investment, the person receiving such money shall be deemed to~~
17 ~~be in the banking business.~~

NOTE: This SECTION exempts from the definition of "business of banking" agents who receive and hold money pending investment in real estate or securities on behalf of the person who deposits the money. Under current law such an agent would only be exempt if the agent kept the money in a separate trust fund, did not mingle the money with the agent's own property, and did not agree to pay interest on the money. This SECTION exempts such agents regardless of whether they pay interest or whether the money is kept separate.

X According to the department of financial institutions the amendment provides a clear exemption from the definition and will allow "agents for investments" to pay interest on free credit balances for their clients.

1 **SECTION 13.** 551.63 (2) of the statutes is amended to read:

2 551.63 (2) ~~No~~ Except as provided under s. 551.34 (1m) (b) and (c), no rule, form
3 or order may be made, amended or rescinded unless the division finds that the action
4 is necessary or appropriate in the public interest and for the protection of investors.
5 In prescribing rules and forms the division may cooperate with the securities
6 administrators of other states and the securities and exchange commission with a
7 view to achieving maximum uniformity in the form and content of registration
8 statements, notice filings, applications and reports wherever practicable.

NOTE: The current standard in s. 551.63 (2), stats., for actions of the division of securities prohibits rules, forms, or orders from being made, amended, or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. However, current s. 551.34 (1m) (b) and (c), stats., require action when a licensee fails to pay court-ordered child support or is liable for delinquent taxes.

This SECTION amends s. 551.63 (2), stats., to exclude the actions required for child support enforcement and delinquent taxes from the general standard used for division actions.

9 **SECTION 14.** 553.26 (4m) of the statutes is amended to read:

10 553.26 (4m) A person who has complied with sub. (1) need not file with the
11 division, during the period when the registration is effective, any more information,
12 ~~including any amendments to the offering circular other than an application or~~
13 ~~amendment required to be filed under s. 553.31.~~ The division may not require
14 changes in the offering circular filed by the franchisor, subject to the division's
15 authority to suspend or revoke a registration for any of the causes under s. 553.28.

NOTE: This SECTION results from 1995 Wisconsin Act 364. The legislation, introduced as 1995 Assembly Bill 782, would have repealed s. 553.31, stats., which requires a franchise registrant to file material amendments to its uniform franchise offering circular. Assembly Amendment 4 to Assembly Bill 782 deleted the proposed repeal of s. 553.31. However, the amendment did not include the necessary changes to s. 553.26 (4m), stats., to remove inconsistent language and to clarify that the amendments required under s. 553.31, stats., must still be filed with the division of securities in the department of financial institutions. This SECTION makes those changes.

16 **SECTION 15.** 553.31 (2) of the statutes is amended to read:

553.31 (2) An amendment to an application filed after the effective date of the registration of the sale of franchises, ~~if the amendment is approved by the division, is effective on the date the division determines, having due regard for the public interest or the protection of franchisees~~ is effective upon receipt of the amendment by the division.

NOTE: This SECTION amends s. 553.31 (2), stats., to clarify that any amendment that is filed with the division of securities after the effective date of a registration of the sale of a franchise is effective upon receipt of the amendment by the division. The current statute is ambiguous as to whether it applies to any amendment filed after an effective registration or only to an amendment to an *application* that was filed after an effective registration.

SECTION 16. Initial applicability.

(1) The treatment of section 138.10 (2) and (15) of the statutes first applies to any person conducting business as a pawnbroker on the effective date of this subsection.

SECTION 17. Effective dates. This act takes effect on the day after publication, except as follows:

(1) PAWNBROKERS. The treatment of section 138.10 (2), (6), (7), and (15) of the statutes and SECTION 16 (1) of this act take effect on the first day of the 6th month beginning after publication.

(END)

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON

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- 1 AN ACT *to renumber* 138.10 (6); *to renumber and amend* 138.10 (2m) and
2 138.10 (7); *to amend* 138.10 (2), 217.02 (9), 218.04 (1) (a), 221.0316 (4), 223.07
3 (1), 224.02, 551.63 (2), 553.26 (4m) and 553.31 (2); *to repeal and recreate*
4 138.09 (title); and *to create* 138.10 (15) and 220.02 (2) (g) and (h) of the
5 statutes; **relating to:** various changes regarding the Department of Financial
6 Institutions and persons regulated by the Department of Financial Institutions
7 and granting rule-making authority (suggested as remedial legislation by the
8 Department of Financial Institutions).

Analysis by the Legislative Reference Bureau

Pawnbrokers

Currently, pawnbrokers are subject to multiple licensing and operational requirements under the trade regulation statutes, the licensed lender statutes, and the pawnbroker statutes. Under the licensed lender statutes, before any person, including a pawnbroker, may charge interest in excess of 18 percent per year, the person must obtain a license from the Division of Banking (division) within the Department of Financial Institutions (DFI). The division must investigate all of the relevant facts regarding each applicant. If the division finds that the applicant is of sufficient character and general fitness, is financially responsible, and meets all

other requirements specified under the licensed lender statutes, the division must grant the license. The licensed lender statutes also contain requirements regarding annual reports by licensees to the division and licensee record keeping.

Under the pawnbroker statutes, a pawnbroker may not charge interest in excess of 3 percent per month or, unless the pawnbroker is a licensed lender, make a loan in excess of \$150. The pawnbroker statutes also mandate a specific procedure that a pawnbroker must follow when selling property deposited with the pawnbroker as security for a loan.

This bill exempts any person that is a licensed lender from the current prohibitions on charging interest in excess of 3 percent per month and making loans in excess of \$150. In addition, the bill exempts any pawnbroker that is also a licensed lender from the current, mandated procedure regarding the sale of property deposited as security for a loan. Finally, the bill grants the division the authority to promulgate rules and issue orders to administer and enforce the licensed lender statutes.

Authority of the Division of Banking

Under current law, the division has general authority to enforce all laws relating to banks and banking in this state. In addition, the division has specific authority to regulate certain financial institutions, including mortgage bankers, loan originators, mortgage brokers, and certain commercial institutions that lend to small businesses. This bill specifies that the division's general authority to enforce laws relating to banks and banking includes the authority to enforce laws relating to these financial institutions.

Trust services

Currently, a state bank may exercise certain trust powers with the approval of the division. In addition, with the approval of the division, a trust company bank or a state bank exercising trust powers may offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. This bill expands the authority of the division to allow a state bank or a trust company bank to offer trust services at the out-of-state offices of these financial institutions.

Sellers of checks

With certain exceptions, current law requires any person who engages in the business of selling and issuing checks, transmitting money, or receiving money for transmission (seller of checks) to obtain a license from the division. Current law also contains numerous regulations specifically governing sellers of checks. Currently, any telegraph company that receives money for immediate transmission by telegraph is exempt from the definition of "seller of checks" and, as a result, from these laws relating to sellers of checks. This bill removes this exemption.

Securities and investments

With certain exceptions, current law prohibits a person from engaging in the business of banking without being organized and chartered as a specified banking institution under state or federal law. Certain agents who receive and hold money, pending investment in real estate or securities on behalf of the person who deposited the money, are not engaged in the business of banking, as that term is currently

defined. However, this exemption from the definition of banking only applies if the agent keeps the money in a separate trust fund, does not commingle the money with the agent's own property, and does not agree to pay interest on the money other than to account for the actual income that is derived from the money while held pending investment.

This bill expands this exemption from the definition of banking. Under this bill, an agent who receives and holds money, pending investment in real estate or securities on behalf of the person who deposits the money, is not engaged in the business of banking, regardless of whether the money is separately kept and regardless of whether the agent agrees to pay interest on the money. Thus, under this bill, an agent may pay interest on money that the agent receives and holds, pending investment in real estate or securities on behalf of the person who deposited the money.

Under current law, the Division of Securities in DFI oversees the licensing of securities broker-dealers, agents, investment advisers, and investment adviser representatives. Current law generally requires every order of the Division of Securities to be appropriate for the protection of both investors and the public interest. Current law also specifically requires the Division of Securities to restrict or suspend a license if the licensee fails to pay court-ordered child support and to revoke a license if the licensee is liable for delinquent taxes. This bill clarifies that the general standard regarding protection of investors and the public interest does not apply to an order restricting, suspending, or revoking a license due to unpaid child support or delinquent taxes.

Franchises

Under Wisconsin's current franchise investment law, a person attempting to sell a franchise must generally register the franchise offered for sale with the Division of Securities. It is unclear, though, whether the person is similarly required to register any material changes to the registration statement. This bill clarifies that, once a person has properly registered a franchise, the person is not required to file any additional information except amendments that reflect material changes to the registration statement. This bill also changes the effective date of any amendment filed after the effective date of the registration from the date the Division of Securities approves of the amendment to the date the Division of Securities receives the amendment.

Collection agencies

Currently, a person who engages in business as a collection agency must be licensed by the commissioner of banking in DFI and is subject to laws specifically governing collection agencies. However, current law exempts certain entities from the definition of "collection agency" and, as a result, from the statutes governing collection agencies. Currently, certain professional men's associations that collect accounts for their members on a nonprofit basis are exempt from the definition of "collection agency." The term "professional men's association" is not currently defined.

This bill removes this exemption for professional men's associations.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Financial Institutions and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 138.09 (title) of the statutes is repealed and recreated to read:

2 **138.09 (title) Licensed lenders.**

3 **SECTION 2.** 138.10 (2) of the statutes is amended to read:

4 138.10 (2) MAXIMUM LOAN. ~~Unless made by a person licensed under s. 138.09,~~
5 a- A pawnbroker's loan may not exceed \$150.

6 **SECTION 3.** 138.10 (2m) of the statutes is renumbered 138.09 (13) and amended
7 to read:

8 138.09 (13) ~~PAWNBROKING BY LICENSED LENDERS.~~ The division of banking may
9 promulgate rules ~~regulating the conduct of pawnbroking by persons licensed under~~
10 ~~s. 138.09~~ and issue orders to administer and enforce this section.

11 **SECTION 4.** 138.10 (6) of the statutes is renumbered 138.10 (13).

12 **SECTION 5.** 138.10 (7) of the statutes is renumbered 138.10 (14) and amended
13 to read:

14 138.10 (14) PENALTY. Any pawnbroker who ~~shall refuse~~ refuses to comply with
15 sub. (6) (13) shall, ~~upon conviction, be punished by imprisonment~~ be imprisoned in
16 the county jail for not more than one year or ~~by fine~~ fined not exceeding more than
17 \$500.

1 **SECTION 6.** 138.10 (15) of the statutes is created to read:

2 138.10 (15) EXCEPTION. This section does not apply to any person that is
3 licensed under s. 138.09.

NOTE: Under current law, pawnbrokers are subject to regulation under s. 138.10, stats., which, among other things, limits loans to \$150 and caps interest rates at 3% per month. If a pawnbroker wants to charge interest rates greater than 18%, the pawnbroker must also register as a licensed lender under s. 138.09, stats. To register as a licensed lender, a pawnbroker must meet certain character and fitness, and financial responsibility requirements. In addition, the pawnbroker must meet certain record keeping and annual reporting requirements. This SECTION provides that if a pawnbroker registers as a licensed lender, the pawnbroker is exempt from the requirements of s. 138.10, stats.

4 **SECTION 7.** 217.02 (9) of the statutes is amended to read:

5 217.02 (9) "Seller of checks" means a person who, as a service or for a fee or
6 other consideration, engages in the business of selling and issuing checks or the
7 receiving of money for transmission or the transmitting of money, or the transmitting
8 of money to foreign countries, ~~but does not include the business of a telegraph~~
9 ~~company in receiving money for immediate transmission by telegraph.~~

NOTE: This SECTION deletes the exemption of telegraph companies from the definition of "seller of checks." Telegraph companies no longer exist.

10 **SECTION 8.** 218.04 (1) (a) of the statutes is amended to read:

11 218.04 (1) (a) "Collection agency" means any person engaging in the business
12 of collecting or receiving for payment for others of any account, bill or other
13 indebtedness. It shall not include attorneys at law authorized to practice in this state
14 and resident herein, banks, express companies, state savings banks, state savings
15 and loan associations, insurers and their agents, trust companies, ~~or professional~~
16 ~~men's associations collecting accounts for its members on a nonprofit basis, where~~
17 ~~such members are required by law to have a license, diploma or permit to practice~~
18 ~~or follow their profession,~~ real estate brokers, and real estate salespersons.

NOTE: Under current law, a person who engages in business as a collection agency must be licensed by the division of banking in the department of financial institutions

(DFI) and is subject to laws that specifically regulate collection agencies. Certain “professional men’s associations” that collect accounts for their members on a nonprofit basis are exempt from the definition of “collections agency.” Since the term “professional men’s association” is currently not defined and DFI cannot locate any such organizations, this SECTION deletes the exemption.

SECTION 9. 220.02 (2) (g) and (h) of the statutes are created to read:

220.02 (2) (g) Mortgage bankers, loan originators, and mortgage brokers under subch. III of ch. 224.

(h) Nondepository small business lenders under subch. IV of ch. 224.

NOTE: Under current law the division of banking (division) in the department of financial institutions has the specific authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses. In addition the division’s general authority authorizes it to enforce all laws relating to banks and banking in this state. This SECTION specifies that the division’s general authority includes the authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses.

SECTION 10. 221.0316 (4) of the statutes is amended to read:

221.0316 (4) TRUST SERVICE OFFICES. A state bank exercising trust powers may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of any other depository institution, as defined under s. 221.0901 (2) (i). A state bank may, with the approval of the division, permit any other depository institution, as defined under s. 221.0901 (2) (i), exercising trust powers or any trust company bank organized under ch. 223 to establish and maintain a trust service office at any of its banking offices. The establishment and operation of a trust service office are subject to s. 223.07. This subsection does not authorize branch banking.

SECTION 11. 223.07 (1) of the statutes is amended to read:

223.07 (1) Any trust company bank may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of a depository institution, as defined in s. 221.0901 (2) (i), if the establishment of the trust service

1 office has been approved by the board of directors of the ~~state or national bank~~
2 depository institution at a meeting called for that purpose.

NOTE: Under current law, the division of banking (division) in the department of financial institutions may allow a state bank to exercise certain trust powers. In addition, the division may allow a trust company bank or a state bank exercising trust powers to offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. During the 1995-1996 legislative session, the legislature amended the law to allow out-of-state depository institutions to establish a Trust Service Office at a bank or branch location in Wisconsin. This and the preceding SECTION expand the authority of the division to allow a Wisconsin state bank or trust company bank to offer trust services at the out-of-state offices of certain financial institutions.

3 **SECTION 12.** 224.02 of the statutes is amended to read:

4 **224.02 Banking, defined.** The soliciting, receiving, or accepting of money or
5 its equivalent on deposit as a regular business by any person, partnership,
6 association, or corporation, shall be deemed to be doing a banking business, whether
7 such deposit is made subject to check or is evidenced by a certificate of deposit, a
8 passbook, a note, a receipt, or other writing, provided that nothing herein shall apply
9 to or include money left with an agent, pending investment in real estate or securities
10 for or on account of the agent's principal. ~~Provided, however, that if money so left with~~
11 ~~an agent for investment shall not be kept in a separate trust fund or if the agent~~
12 ~~receiving such money shall mingle same with the agent's own property, whether with~~
13 ~~or without the consent of the principal, or shall make an agreement to pay any certain~~
14 ~~rate of interest thereon or any agreement to pay interest thereon other than an~~
15 ~~agreement to account for the actual income which may be derived from such money~~
16 ~~while held pending investment, the person receiving such money shall be deemed to~~
17 ~~be in the banking business.~~

NOTE: This SECTION exempts from the definition of "business of banking" agents who receive and hold money pending investment in real estate or securities on behalf of the person who deposits the money. Under current law such an agent would only be exempt if the agent kept the money in a separate trust fund, did not mingle the money with the agent's own property, and did not agree to pay interest on the money. This SECTION exempts such agents regardless of whether they pay interest or whether the money is kept separate.

INSERT 7-17 ✓

1 **SECTION 13.** 551.63 (2) of the statutes is amended to read:

2 551.63 (2) ~~No~~ Except as provided under s. 551.34 (1m) (b) and (c), no rule, form
3 or order may be made, amended or rescinded unless the division finds that the action
4 is necessary or appropriate in the public interest and for the protection of investors.
5 In prescribing rules and forms the division may cooperate with the securities
6 administrators of other states and the securities and exchange commission with a
7 view to achieving maximum uniformity in the form and content of registration
8 statements, notice filings, applications and reports wherever practicable.

NOTE: The current standard in s. 551.63 (2), stats., for actions of the division of securities prohibits rules, forms, or orders from being made, amended, or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. However, current s. 551.34 (1m) (b) and (c), stats., require action when a licensee fails to pay court-ordered child support or is liable for delinquent taxes.

This SECTION amends s. 551.63 (2), stats., to exclude the actions required for child support enforcement and delinquent taxes from the general standard used for division actions.

9 **SECTION 14.** 553.26 (4m) of the statutes is amended to read:

10 553.26 (4m) A person who has complied with sub. (1) need not file with the
11 division, during the period when the registration is effective, any more information,
12 ~~including any amendments to the offering circular other than an application or~~
13 ~~amendment required to be filed under s. 553.31.~~ The division may not require
14 changes in the offering circular filed by the franchisor, subject to the division's
15 authority to suspend or revoke a registration for any of the causes under s. 553.28.

NOTE: This SECTION results from 1995 Wisconsin Act 364. The legislation, introduced as 1995 Assembly Bill 782, would have repealed s. 553.31, stats., which requires a franchise registrant to file material amendments to its uniform franchise offering circular. Assembly Amendment 4 to Assembly Bill 782 deleted the proposed repeal of s. 553.31. However, the amendment did not include the necessary changes to s. 553.26 (4m), stats., to remove inconsistent language and to clarify that the amendments required under s. 553.31, stats., must still be filed with the division of securities in the department of financial institutions. This SECTION makes those changes.

16 **SECTION 15.** 553.31 (2) of the statutes is amended to read:

553.31 (2) An amendment to an application filed after the effective date of the registration of the sale of franchises, if the amendment is approved by the division, is effective on the date the division determines, having due regard for the public interest or the protection of franchisees is effective upon receipt of the amendment by the division.

NOTE: This SECTION amends s. 553.31 (2), stats., to clarify that any amendment that is filed with the division of securities after the effective date of a registration of the sale of a franchise is effective upon receipt of the amendment by the division. The current statute is ambiguous as to whether it applies to any amendment filed after an effective registration or only to an amendment to an *application* that was filed after an effective registration.

SECTION 16. Initial applicability.

(1) The treatment of section 138.10 (2) and (15) of the statutes first applies to any person conducting business as a pawnbroker on the effective date of this subsection.

SECTION 17. Effective dates. This act takes effect on the day after publication, except as follows:

(1) PAWNBROKERS. The treatment of section 138.10 (2), (6), (7), and (15) of the statutes and SECTION 16 (1) of this act take effect on the first day of the 6th month beginning after publication.

(END)

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1418/18ins
MDK:.....

1

INSERT 7-17:

2

According to the Department of Financial Institutions, the amendment provides a ✓

3

clear exemption from the definition and will allow "agents for investments" to pay

4

interest on free credit balances for their clients.



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
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LEGAL SECTION: (608) 266-3561
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November 15, 2005

MEMORANDUM

To: Legislative Council - LRC

From: Mark D. Kunkel, Senior Legislative Attorney

Re: LRB-1418/1 Franchise registration statements, definition of banking, trust powers, authority of the division of banking, securities licenses, sellers of checks, pawnbrokers

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

_____ JACKET FOR ASSEMBLY ☒ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0131 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.